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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
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12 DR. ELLIOT MCGUCKEN, an individual,

13 Plaintiff,

14 v.
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16 LONELY PLANET GLOBAL, INC., a
17 Delaware Corporation; and Does 1-10,
inclusive,

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19 Defendants.
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Case No.: 2:22-cv-5476-DMG (SKx)
Hon. Dolly M. Gee Presiding

**PLAINTIFF'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF ITS OPPOSITION TO
DEFENDANT LONELY PLANET'S
MOTION FOR TRANSFER**

Time: 9:30 a.m.
Date: March 10, 2023
Judge: Hon. Dolly M. Gee

1 TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF
2 RECORD:

3 PLEASE TAKE NOTICE THAT Plaintiff, Elliot McGucken, respectfully
4 requests that this Court take judicial notice of records constituting screenshots from
5 Defendant Lonely Planet's website, Flickr, Inc.'s website, and the LinkedIn website
6 regarding the location of the writers and editors of the infringing work at issue. The
7 Exhibits for which judicial notice is sought are set forth below and it is respectfully
8 submitted that the Court take notice of and consider same.

9 **A. Online Information**

10 Under Federal Rule of Evidence 201, a court must take judicial notice of
11 certain facts "if a party requests it and the court is supplied with the necessary
12 information." Fed. R. Evid. 201(c)(2). Rule 201 allows a court to take judicial notice
13 of facts that are "not subject to reasonable dispute because [they] (1) [are] generally
14 known within the trial court's territorial jurisdiction; or (2) can be accurately and
15 readily determined from sources whose accuracy cannot reasonably be questioned."
16 Fed. R. Evid. 201(b).

17 In general, websites and their contents may be judicially noticed. *Pac.*
18 *Overlander, LLC v. Kauai Overlander*, No. 18-cv-2142-KAW, 2018 WL 3821070, at
19 *2 (N.D. Cal. Aug. 10, 2018) (citing *Caldwell v. Caldwell*, No. 05-cv-4166-PJH,
20 2006 WL 618511, at *4 (N.D. Cal. Mar. 13, 2006) ("... [A]s a general matter,
21 websites and their contents may be proper subjects for judicial notice.") and *Datel*
22 *Holdings Ltd. v. Microsoft Corp.*, 712 F. Supp. 2d 974, 984 (N.D. Cal. 2010));
23 *2Die4Kourt v. Hillair Cap. Mgmt., LLC*, No. 16-cv-1304-JVS-DFM, 2016 WL
24 4487895, at *1 n.1 (C.D. Cal. Aug. 23, 2016) (taking judicial notice of thirty-four
25 online news articles and social media posts "solely for their existence and content,
26 and not for the truth of any statements in the documents.") A "court may take judicial
27 notice of information publicly announced on a party's website, as long as the
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1 website's authenticity is not in dispute and it is capable of accurate and ready
 2 determination.” *Wells Fargo Bank v. Wrights Mill Holdings*, 127 F. Supp. 3d 156,
 3 167 (S.D.N.Y. 2015) (internal quotation omitted). Lonely Planet publishes and
 4 operates its own website and it is publicly available. Attorney, Frank R. Trechsel,
 5 accessed this website and took screenshots of content available on the website
 6 showing the “inside” of the book at issue in this litigation. This screenshot is attached
 7 to the declaration of Frank R. Trechsel as **Exhibit 1**. Trechsel also took screenshots
 8 of the LinkedIn pages for some of the writers and editors of the infringing book for
 9 the purpose of showing that they are not located in New York. These screenshots are
 10 compiled into a single exhibit attached to his declaration as **Exhibit 2**. Finally,
 11 Trechsel took a screenshot of Flickr, Inc.’s website “terms and conditions” page for
 12 the purpose of showing that it is located in California. This screenshot is attached to
 13 the declaration of Frank R. Trechsel as **Exhibit 3**.

14 This Court may take judicial notice of Lonely Planet’s website, LinkedIn’s
 15 website, and Flickr’s website under F.R.E. 201(b), which permits judicial notice of
 16 facts that are not subject to reasonable dispute because those facts are “generally
 17 known” or “capable of accurate and ready determination.” The contents of **Exhibits**
 18 **1, 2, and 3** should be considered by the court.

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 21 Respectfully submitted,

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 23 Dated: February 17, 2023

24 By: /s/Frank R. Trechsel
 25 Scott Alan Burroughs, Esq.
 26 Frank R. Trechsel, Esq.
 27 DONIGER / BURROUGHS
 28 Attorney for Plaintiff
 Elliot McGucken